

STATE OF MICHIGAN  
IN THE SUPREME COURT

ORIGINAL

ALBERTA STUDIER, PATRICIA M.  
SANOCKI, MARY A. NICHOLS, LAVIVA  
M. CABAY, MARY L. WOODRING and  
MILDRED E. WEDELL,

Plaintiffs-Appellants/Appellees,

v

MICHIGAN PUBLIC SCHOOL EMPLOYEES  
RETIREMENT BOARD, MICHIGAN PUBLIC  
SCHOOL EMPLOYEES' RETIREMENT  
SYSTEM, DEPARTMENT OF MANAGEMENT  
AND BUDGET, and TREASURER OF MICHIGAN,

Defendants-Appellees/Appellants.

Supreme Court Docket Nos.  
125765, 125766

Court of Appeals Docket No.  
243796

Ingham Co. Cir. Ct. Docket No.  
00-092435-AZ

KELLER THOMA, A PROFESSIONAL CORPORATION

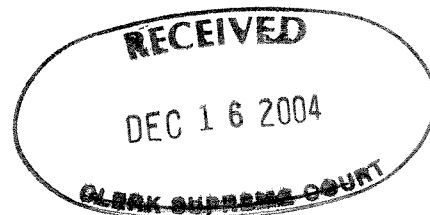
KELLER THOMA, *A Professional Corporation*

By: Dennis B. DuBay (P12976)  
Richard W. Fanning, Jr. (P55697)  
Barbara A. Rohrer (P58807)

Attorneys for *Amici Curiae*  
Michigan Municipal League and  
Michigan Townships Association  
440 E. Congress, 5th Floor  
Detroit, MI 48226  
(313.965.7610)

AMICI CURIAE BRIEF THE MICHIGAN MUNICIPAL LEAGUE  
AND THE MICHIGAN TOWNSHIPS ASSOCIATION

KELLER THOMA, P.C.  
Dennis B. DuBay (P12976)  
Richard W. Fanning, Jr. (P55697)  
Barbara A. Rohrer (P58807)  
Attorneys for *Amici Curiae*  
Michigan Municipal League and  
Michigan Townships Association  
440 East Congress, Fifth Floor  
Detroit, Michigan 48226  
(313) 965-7610



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## QUESTIONS PRESENTED

- I. WHETHER HEALTH CARE BENEFITS ARE ACCRUED FINANCIAL BENEFITS UNDER 1963 CONST. ARTICLE 9, §24 WHERE SUCH BENEFITS DO NOT INVOLVE MONETARY PENSION PAYMENTS?

Defendants say "No"

Amici Curiae says "No"

The Court of Appeals said "No"

Plaintiffs say "Yes"

- II. WHETHER THE MICHIGAN PUBLIC SCHOOL EMPLOYEES RETIREMENT SYSTEM CREATES AN UNAMBIGUOUS AND UNMISTAKABLE CONTRACT PROTECTED UNDER THE CONTRACT CLAUSE OF THE MICHIGAN CONSTITUTION?

Defendants say "No"

Amici Curiae says "No"

The Court of Appeals said "Yes"

Plaintiffs say "Yes"

- III. ASSUMING *ARGUENDO*, THAT THE HEALTH CARE PROVISIONS OF THE MICHIGAN PUBLIC SCHOOL EMPLOYEES RETIREMENT SYSTEM IS AN ACCRUED FINANCIAL BENEFIT AND A CONTRACT, DID THE STATE IMPAIR OR DIMINISH THOSE BENEFITS?

Defendants say "No"

Amici Curiae says "No"

The Court of Appeals said "Yes"

Plaintiffs say "Yes"

**STATEMENT OF APPELLATE JURISDICTION**

This Court has jurisdiction pursuant to MCR 7.301(A)(2) and its September 16, 2004 Orders granting leave to appeal.

KELLER THOMA A PROFESSIONAL CORPORATION

## STATEMENT OF FACTS

*Amicus Curiae* Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort and whose membership is comprised of some 511 Michigan cities and villages. Among its members are 430 city and village members of the Michigan Municipal League Legal Defense Fund which the Michigan Municipal League operates through a Board of Directors. The purpose of the Legal Defense Fund is to represent the member cities and villages in litigation of statewide significance. This brief is authorized by the Board of Directors of the Legal Defense Fund whose membership includes: The President and Executive Director of the Michigan Municipal League and the following attorneys who are officers and directors of the Michigan Association of Municipal Attorneys: William B. Beach, city attorney, Rockwood; John E. Beras, city attorney, Southfield; Randall L. Brown, city attorney, Portage; Ruth Carter, corporation counsel, Detroit; Peter Doren, city attorney, Traverse City; Bonnie Hoff, city attorney, Marquette; Andrew J. Mulder, city attorney, Holland; Clyde Robinson, city attorney, Battle Creek; Debra A. Walling, corporation counsel, Dearborn; Eric D. Williams, city attorney, Big Rapids and William C. Mathewson, general counsel, Michigan Municipal League.

*Amicus Curiae* Michigan Townships Association ("the Association") is a Michigan non-profit corporation whose membership consists of in excess of 1,235 townships within the State of Michigan (including both general law and charter townships) joined together for the purpose of providing education, exchange of information and guidance to and among township officials to enhance the more efficient and knowledgeable administration of township government under the laws and statute of the State of Michigan.

This matter presents the issue of whether health care benefits, specifically prescription drug benefits, provided to certain retired public employees under the Michigan Public School Employees Retirement System (MPERS) are an accrued financial benefit within the meaning of Article 9, Section 24 of the Michigan Constitution. It also presents the issue of whether those benefits are contractual rights which cannot be impaired by the government under Article 1, Section 10 of the Constitutions of the United States and of Michigan. Finally, assuming that those benefits are accrued financial benefits and/or a contractual right, whether the State of Michigan impaired or diminished those benefits.

The League and the Association, as well as their member communities, will be greatly affected by the decision of the Court in this matter. A number of the member communities provide health insurance benefits, including prescription drug benefits, to their retirees. In recent years, these communities have faced rapidly increasing costs for these benefits. This decision will greatly impact the ability of these communities to effectively deal with these costs and, in turn, provide governmental services to their citizens. This Honorable Court's decision, therefore, will have ramifications far beyond the facts of the instant case, and will have substantial effects upon persons and entities other than the parties.

In addition to the facts set forth above, the League and the Association adopt the Statement of Facts set forth by the Michigan Public School Employees' Retirement Board, the Michigan Public School Employees' Retirement System, the Michigan Department of Management and Budget and the Treasurer of the State of Michigan in their Briefs on Appeal to this Court.



## ARGUMENT

### **I. HEALTH CARE BENEFITS ARE NOT ACCRUED FINANCIAL BENEFITS WITHIN THE MEANING OF ARTICLE 9, SECTION 24 OF THE MICHIGAN CONSTITUTION.**

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**Standard of Review.** Constitutional questions of law are subject to *de novo* review. *Mahaffey v Attorney General*, 222 Mich App 325, 334; 564 NW2d 104 (1997). A ruling upon a motion for summary disposition is reviewed *de novo*. *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999).

**Discussion.** The issue to be decided by the Court in this matter is whether health care benefits, specifically prescription drug benefits, are “accrued financial benefits” under Art. 9, § 24 of the Michigan Constitution. That provision states:

The accrued **financial benefits** of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

Financial benefits arising on account of service rendered in each fiscal year shall be funded during that given year and such funding shall not be used for financing unfunded accrued liabilities. (Emphasis added).

This issue was last before this Honorable Court in *Musselman v Governor*, 448 Mich 503; 533 NW2d 237 (1995). Six Justices took part in the initial opinion. Justice Boyle (who wrote for the Court), Justices Brickley, Mallet, and Cavanagh, who concurred with Justice Boyle, determined that health care benefits were accrued financial benefits. Justices Riley and Levin, who concurred in part and dissented in part, determined that healthcare benefits did not fall within the provisions of Art. 9, § 24. *Musselman*, 448 Mich 503, 524, 532. Justice Weaver did not take part in *Musselman*, 448 Mich at 524.

However, the Court granted rehearing of *Musselman v Governor of State of Mich.*, 449 Mich 1205; 535 NW2d 792 (Table) (1995). The decision on rehearing is found at *Musselman v Governor*,

450 Mich 574; 545 NW2d 346 (1996). The rehearing resulted in the Court's equally divided positions on the issue of healthcare benefits, which occurred when Justice Brickly vacated his concurrence in this portion of Justice Boyle's previous opinion in *Musselman I*; and Justice Weaver joined into the case and decided that healthcare benefits are not "financial benefits" for purposes of Art. 9, § 24. Thus, in *Musselman II*, Justices Weaver, Levin, and Riley agreed that healthcare benefits are not "financial benefits" pursuant to Art. 9, § 24. *Musselman II*, 450 Mich at 577-582. Justices Boyle, Cavanagh, and Mallett found that health care benefits were accrued financial benefits. *Musselman II*, 450 Mich 582-587. Justice Brickley decided that it was not necessary to reach the issue. *Musselman II*, 450 Mich 576-577. Thus, until this case, the issue was undecided by the Michigan appellate courts.

To determine the scope and construction of Art. 9, § 24, this Court must examine the intent of the framers of the Constitution. *Burdick v Secretary of State*, 373 Mich 578; 130 NW2d 380 (1964):

It is a fundamental principle of constitutional construction that we determine the intent of the framers of the Constitution and of the people adopting it.

\* \* \*

In *Pfeiffer v Board of Education of Detroit*, 118 Mich 560, 564, we said: "In determining this question, we should endeavor to place ourselves in the position of the framers of the Constitution, and ascertain what was meant at the time; for, if we are successful in doing this, we have solved the question of its meaning for all time. It could not mean one thing at the time of its adoption, and another thing today, when public sentiments have undergone a change (citation omitted). **It is therefore essential that we determine the intent of this provision by reference to the state of the law or custom previously existing, and by contemporaneous construction, rather than attempt to test its meaning by the so-called advanced or liberal views obtaining a large class of the community at the present day.** 373 Mich 578, 584 (emphasis added).

To determine the scope of “financial benefits,” this Court must determine the plain meaning of the term as understood by the framers at the time the provision was adopted. *Carman v Secretary of State*, 384 Mich 443; 185 NW2d 1 (1971); *Committee for Constitutional Reform v Secretary of State*, 425 Mich 336, 340; 389 NW2d 430 (1986); *People v Nash*, 418 Mich 196, 209; 341 NW2d 439 (1983); *Advisory Opinion on Constitutionality of 1978 PA 426*, 403 Mich 631, 638-639; 272 NW2d 495 (1978); *In re Proposal C*, 384 Mich 390, 405; 185 NW2d 9 (1971). It is evident from this line of cases that it is the intent of the framers at the time the constitutional provisions were adopted that controls its interpretation.

The notes of the constitutional convention are indicative that prescription drug/healthcare benefits were not intended to be subject to Art. 9, § 24. The original proposal to the Committee on Finance and Taxation read:

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof, which shall not be diminished or impaired thereby.

**All such benefits** arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be usable for financing unfunded accrued liabilities (emphasis added) (1 Official Record, Constitutional Conventions, p. 770; Ex. A).

Importantly, the Committee struck “All such” and replaced this language with the term “Financial.” The amendment was adopted on April 19, 1962, with a vote of 117 yeas to 1 nay (2 Official Record, Constitution Convention, p. 2659; Ex. A). Thus, the Committee deliberately determined to limit the benefits subject to Art. 9, § 24, to “financial benefits” and not to include “All ... benefits.”

Words are to be given their plain, ordinary meaning. *Vetter v Fowler*, 167 Mich 499; 133 NW 500 (1911); *People v Board of State Canvassers*, 323 Mich 523, 529; 35 NW2d 669 (1949). Clearly, the plain meaning of the term “financial” concerns monetary payments, rather than health

care benefits. Justice Riley, in her dissent in the first *Musselman*, *supra*, 448 Mich at 527, stated: “The normal usage of the word ‘financial’ connotes money and ‘money’ connotes some form of hard currency that can be ‘spent’” (footnotes omitted).

Prior decisions by the Michigan Courts supports the proposition that Art. 9, §24 is intended to apply to the monetary pension payments, rather than non-monetary retirement benefits, such as health care. This Court noted that Art. 24, §24 was designed to preserved “the right to receive certain *pension payments* upon retirement . . .” *Kosa, v Treasurer of State of Mich.*, 408 Mich at 371; 292 NW2d at 460 (emphasis added). This holding has been consistently repeated by both this Court and the Court of Appeals. See *Shelby Township Police and Fire Retirement Bd. v. Charter Township of Shelby*, 438 Mich 247, 256; 475 NW2d 249, 252 fn 4 (1991); *Tyler v. Livonia Public Schools*, 459 Mich. 382, 396; 590 NW2d 560, 566 (1999); *Halstead v. City of Flint*, 127 Mich App 148, 154; 338 NW2d 903, 906 (1983); *Association of Professional and Technical Employees v. City of Detroit*, 154 Mich App 440; 398 NW2d 436 (1986). Indeed, in *Tyler*, this Court observed that “this Section of the Michigan Constitution protects only *pension* benefits, not *workers compensation* benefits, from diminishment or impairment.” *Tyler, supra*, 459 Mich at 396; 590 NW2d at 566 (emphasis in original). Moreover, this Court has also ruled that the intent of Art. 9, §24 was to protect pension systems, not other governmental programs. In *Jurva v. Attorney General of State of Michigan*, 419 Mich 209; 351 NW2d 813 (1984), the Court stated:

The overriding concern of the delegates to the Constitutional Convention was the establishment and maintenance of the actuarial soundness of the state's pension systems, not with the protection of other financial systems. *Id.*, 419 Mich at 225; 351 NW2d at 820.

Health care benefits do not fit within the plain and commonly held meaning of a pension. In *National Educ. Association-Rhode Island ex rel. Scigulinsky v. Retirement Bd. of Rhode Island*

*Employees' Retirement System*, 172 F3d 22, 26 (CA 1, 1999), the Court noted that "pension benefits" are monetary payments designed to provide income to an employee upon retirement. Since prescription drug/healthcare benefits do not provide the retiree with monetary income, but instead provide a service and/or benefit (to be used consistent with the retiree's healthcare needs), prescription drug/healthcare benefits are not pension payments or "financial benefits." Although there is a cost to the provider of the prescription drug/healthcare benefit, this cost does not make it a pension or a "financial benefit" to the retiree because the benefit is not "money." The benefit conferred is not a discretionary use of "money" but a fringe benefit of healthcare to be used only as needed. Stated another way, as financial benefits, pension payments are fungible in that a dollar is a dollar, whereas medical benefits are not subject to definition until the service or product is provided. The financial benefits of the pension are defined at the time of retirement, the medical benefits are not financially determined until the benefit is used, if at all.

Further, the framers of the Constitution did not consider healthcare benefits to be part of "financial benefits," in no small part because in 1963, it is undisputed that these benefits were not part of any public retirement system within this State. For example, see 1945 PA 136. In fact, Title XVIII, the Medicare Act, was not enacted until 1965, two years after the Michigan Constitution was enacted. Moreover, until very recently, Medicare did not include prescription drugs within its provided benefits. Such evidence indicates that a new hand cannot judicially rewrite the Constitution to add prescription drug/healthcare benefits to those included in Art. 9, § 24. Moreover, there were no references to healthcare or prescription drug benefits during the debates on Art. 9, § 24, which is further evidence that these were not intended to be part of the interpretation of the scope of Art. 9, § 24. *Grand Traverse County v State of Michigan*, 450 Mich 457, 473; 538

NW2d 1 (1995) (the lack of references to the issue in controversy at the constitutional debate is evidence that the matter was not intended to be included in the constitutional provision).

These important constitutional interpretation considerations were discussed in the opinion of Justice Weaver, in the *Musselman II*, *supra* decision on rehearing:

I believe that when Art. 9, §24 was drafted health care benefits were not included within the scope of prefunded benefits. It was not until 1974, ten years after the Constitutional Convention, that health benefits were made available. 450 Mich 574, 580; 545 NW2d 346, 348.

As part of her analysis in that case, Justice Weaver explained that healthcare benefits do not fit into the “financial benefit” construct because they are “fringe benefits” which make them part of the general benefit structure rather than deferred compensation for work already performed. 450 Mich 574, 579-580; 545 NW2d 346, 347-348. Her opinion states:

The legislative history surrounding enactment of §24 makes clear exactly which “benefits” the Legislature contemplated prefunding: “Now, it is the belief of the committee that the *benefits* of pensions plans are in a sense *deferred compensation for work performed*” (footnote omitted).

Later in the same discussion, committee member Van Dusen stated:

[T]he words “accrued financial benefits” were used designedly, so that the contractual right of the employee would be limited to the *deferred compensation* embodied in any pension plan, and we hope to avoid thereby the proliferation of litigation by individual participants in retirement systems talking about general benefits structure, or something other than his specific right to receive benefits.

The case before the Court today is exactly the type of litigation that the convention delegates sought to prevent. Health benefits are not a form of “deferred compensation,” but rather have become a part of the general benefits structure. I believe health benefits are not a form of deferred compensation because they are not provided as a form of remuneration for work performed but rather are more akin to a fringe benefit. 450 Mich 574, 579-580; 545 NW2d 346, 347-348.

The soundness of this approach is further illustrated by ERISA and the Internal Revenue Code, which treat healthcare benefits in a distinct manner from financial retirement benefits. For

example, § 412 of the Internal Revenue Code of 1986 requires pre-funding of pension benefits. However, retiree health insurance benefits are not a part of this provision. Moreover, §105 and §106 exclude healthcare benefits from income. Thus, ERISA further confirms the plain and common understanding of pension plan benefits does not include health insurance benefits. 29 CFR 2510.3-1; 29 CFR 2510.3-2.

Moreover, as is noted by Justice Weaver and the framers of the Constitution, the instant lawsuit is precisely the quality and kind that the enactment of Art. 9, § 24 was designed to preclude. To allow a construction of the constitutional provision that would foster such suits would be an abrogation of the framers' intent. The framers clearly stated that they did not intend to create a vehicle for challenges based upon the general benefit structure. This is made clear not only by member Van Dusen's statement, but also by the clear addition of the clarification that only "financial benefits" would be included in the provisions of Art. 9, § 24 and not "all benefits" (see discussion above).

Additionally, fringe benefits such as prescription drug/healthcare benefits are mandatory subjects of bargaining between public employers and its labor associations. Public Employment Relations Act ("PERA"), MCLA §423.201 *et seq.* Thus, any ruling that would place these benefits within the scope of Art. 24, §24 would negate PERA's provisions that such matters are an essential element of the collective bargaining process.

For the foregoing reasons, this Court should affirm the conclusion of the Court of Appeals that health care benefits, such as prescription drug benefits, are not "accrued financial benefits" under the scope of Art. 9, § 24.

## II. THE COURT OF APPEALS ERRED BY FINDING THAT MCLA §38.1391(1) CREATED A CONTRACT ENTITLED TO CONSTITUTIONAL PROTECTION.

**Standard of Review.** Constitutional questions of law are subject to *de novo* review. *Mahaffey, supra*, 222 Mich App at 334. A ruling upon a motion for summary disposition is reviewed *de novo*. *Maiden, supra*.

**Discussion.** Both the Michigan and United States Constitutions contain provisions restricting governmental action which substantially impairs contractual rights. The Contract Clause of the United States Constitution states, in relevant part:

No State shall . . . pass any Bill of Attainder, ex post facto Law or Law impairing the obligation of contracts. US Const, Art. 1, §10.

The parallel provision of the Michigan Constitution states:

No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted. Const 1963, Art. 1, §10.

The provision of the Michigan Constitution has been found to be co-extensive with its Federal counterpart. *In re Certified Question*, 447 Mich 765, 776; 527 NW2d 468 (1994).

Both this Court and the United States Supreme Court have articulated a well-settled presumption that a statute does not give rise to contractual rights. *In re Certified Question, supra*, 447 Mich at 777-778; 527 NW2d at 474; *National Railroad Passenger Corp. v. Atchison, Topeka & Santa Fe Rwy Co., et al.*, 470 US 451, 466; 105 S Ct 1441; 84 L Ed 2d 432 (1985). As explained by the United States Supreme Court, this presumption is based on the fact that the legislature is a body which creates, and modifies, laws to effectuate the policy of the government at any given time. The Court explained:

Policies, unlike contracts, are inherently subject to revision and/or appeal, and to construe laws as contracts when the obligation is not clearly and unequivocally



expressed would be to limit drastically the essential powers of a legislative body. *National Railroad Passenger Corp.*, 470 US at 466.

Thus, a statute must contain a clear and unambiguous reflection of the legislature's intent in order for it to create contract rights. As this Court has stated:

Courts usually have concluded that a state contractual obligation arises from legislation only if the legislature has unambiguously expressed an intention to create the obligation. *In re Certified Question*, *supra*, 447 Mich at 777-778; 527 NW2d at 474.

The Federal Courts also require a clear, unambiguous and unmistakable demonstration of the legislature's intent to create a contract. For example, in *Parker v. Wakelin*, 123 F3d 1 (CA 1, 1997), the Court of Appeals for the First Circuit held:

Because legislatures should not bind future legislatures from employing their sovereign powers in the absence of the clearest of intent to create vested rights protected under the Contract Clause, courts developed canons of construction disfavoring implied governmental contractual obligations. Thus, "neither the right of taxation, nor any other power of sovereignty, will be held ... to have been surrendered, unless such surrender has been expressed in terms too plain to be mistaken." *Winstar*, 518 U.S. at ----, 116 S.Ct. at 2455 (quoting *Jefferson Branch Bank v. Skelly*, 66 U.S. (1 Black) 436, 446 (1861)). The requirement that "the government's obligation unmistakably appear thus served the dual purposes of limiting contractual incursions on a State's sovereign powers and of avoiding difficult constitutional questions about the extent of State authority to limit the subsequent exercise of legislative power." *Winstar*, 518 U.S. at ----, 116 S.Ct. at 2455.

See also *Rhode Island Broth. of Correctional Officers v. Rhode Island*, 357 F.3d 42, 45 (CA1, 2004) (rejecting the claim that a statute created contractual rights and holding that "the legislature's intent to create such rights against the state be *unmistakably* clear.") (Emphasis in original).

Indeed, in *Rhode Island Broth. of Correctional Officers*, the Court was asked to determine whether a statute providing for "incentive" payments to certain employees was a contract after the legislature modified the formula used to determine the amount of those payments. In determining

that a contract had not been created, the Court relied upon the absence of language expressly granting a contractual commitment. *Id.*, 123 F3d at 46. Indeed, the Court noted that “[i]t would have been child’s play” for the legislature to expressly create a contractual right if that had been its intent. *Id.* 123 F3d at 46. The Court also rejected the claim that the employee’s mere expectations were sufficient to create a contract. The Court held:

True, civil service jobs commonly create expectations that holders will likely enjoy no reductions in pay (but instead get periodic increases); but expectations alone are not contracts--contracts are written to protect expectations. Indeed, legislation constantly creates expectations that are disappointed by later modifications, repeal or lack of funding. *Id.*, 357 F3d at 46.

In the case before this Court, there can be no question but that there is no unambiguous and unmistakably clear intent to create a contractual right. The statute in question reads as follows:

The retirement system shall pay the entire monthly premium or membership or subscription fee for hospital, medical-surgical, and sick care benefits for the benefit of a retirant or retirement allowance beneficiary who elects coverage in the plan authorized by the retirement board and the department. MCLA §38.1391(1).

The language at issue does not promise any contractual benefit. Indeed, as in *Rhode Island Broth. of Correctional Officers*, neither the word contract, nor any similar expression, is used in the statute. In fact, there is no indication that the legislature intended to bind future legislatures so as to prevent any change in this legislation or in the manner in which this legislation is effectuated. Further, the mere use of the word “shall” is woefully insufficient to overcome the well settled presumption against a contractual right. Rather, this merely requires the State, through the Executive, to act in a certain way until such point as the legislature sees fit to change the law. Such language, of course, is a common place statutory expression which can not overcome the well-settled presumption against finding a contractual obligation.

The Court of Appeals erred in its consideration of this issue. Indeed, the Court of Appeals found a contract based on its conclusion that health insurance was part of the compensation package which was offered to employees. *Studier v. Michigan Public School Employee's Retirement Board*, 260 Mich App 460, 476; 679 NW2d 88, 98 (2004). Of course, even if this is true as to the retiree health benefits at issue here, the Court of Appeals's observation merely goes to the expectation of the employees and retirees who are covered by MPSERS. As stated above, this is insufficient to create a contractual obligation. *Rhode Island Broth. of Correctional Officers, supra*.

Importantly, the Court of Appeals failed to adequately consider the *actual language of the statute*. Rather, it based its decision on its belief as to the importance of health insurance to an employee. Courts should not find contracts where none exist simply because the benefit at issue appears, to the Court, to be important. Indeed, the contractual obligations of the state would be greatly increased, and the ability of future legislatures to effectuate policy changes would be significantly limited, if the Court of Appeals' reasoning were to be applied to other statutes. Indeed, the contractual obligations of the state would seemingly be open to the subjective judgment of later Courts as to the importance of various benefits. As such, the Court of Appeals should be reversed on this issue.

**III. EVEN IF, ASSUMING *ARGUENDO*, A CONSTITUTIONALLY OR CONTRACTUALLY PROTECTED RIGHT IS PRESENT, THERE HAS BEEN NO IMPAIRMENT OF SUCH A BENEFIT.**

**Standard of Review.** Constitutional questions of law are subject to *de novo* review. *Mahaffey, supra*, 222 Mich App at 334. A ruling upon a motion for summary disposition is reviewed *de novo*. *Maiden, supra*.

**Discussion.** Even if the MPSERS health care provision created an accrued or contractual benefit, the imposition of changes in health insurance did not represent a diminishment or

impairment of that benefit. This Honorable Court has set forth a three part test to determine if a law has impaired a contractual relationship:

1. Whether the state law has, in fact, operated as a substantial impairment of a contractual relationship;
2. Whether the legislative disruption of contract expectancies is necessary to the public good; and
3. Whether the means chosen by the Legislature to address the public need are reasonable.

*In re Certified Question, supra*, 447 Mich at 777; 527 NW2d at 474.<sup>1</sup>

First, the imposition of changes in the MPSERS prescription drug benefit did not operate as a substantial impairment of any contractual obligation. As stated above, the Contract Clause is not violated unless there is a **substantial** impairment of the contractual benefits at issue. As such, a court will not find a Contract Clause violation where the basic benefits of the contract are not altered. In *Romein v. General Motors Corp.*, 436 Mich 515; 462 NW2d 555 (1990), this Court held that a law concerning coordination of workers compensation benefits did not violate the Contract Clause. In reaching this conclusion, the Court held that there would be no substantial impairment of any contract because “the impairment in this case does not alter this basic benefit . . .” *Id.*, 436 Mich at 534; 462 NW2d at 565.

Here, the sole obligation on the part of the State is to “pay the entire monthly premium or membership or subscription fee for hospital, medical-surgical, and sick care benefits.” MCLA §38.1391(1). There is no dispute that the State continues to pay the entire **premium**. Significantly, the statute does **not** obligate the State to pay for the entire **cost** of the coverage. Nor is there any

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<sup>1</sup>Though this test has most commonly been used in cases involving Art. 1, §10, the Court should also use it in cases involving Art. 9, § 24. Indeed, both provisions deal with the same question: whether a contractual right has been impaired by governmental action.

provision that the proportion of the total borne by the State and the retiree cost would remain constant over the time. Indeed, the statute allows the state to “authorize the plan.” MCLA §38.1391(1). Thus, it specifically contemplates that the State may change aspects of the plan, or even the plan itself. The mere fact that the retirees’ costs for one type of health care benefit (prescription drugs) has increased does not change the basic benefits of the statute - the provision of health insurance. Similarly, this basic benefit would not be changed even if the State is now paying a lower proportional share of the total cost of coverage. As such, there has been no substantial impairment.

Secondly, there can be no question that there is a vital necessity for the State to take action to contain the increasing costs of the MPSERS prescription drug benefit. Indeed, it can not be disputed that the State of Michigan is facing an extreme budget crisis. This Court can take judicial notice of the legislative actions and debates concerning this crisis, as well as the cost saving measures which have reduced services to the citizens in numerous areas. The spiraling costs of retiree health care is contributing to this crisis. Indeed, many of the members of the League and the Association are facing similar circumstances. Thus, it is clearly necessary for the public good that the State adjust co-payments and impose a formulary in the MPSERS prescription drug benefit.

Third, it is entirely reasonable for the state to seek to reduce the costs of the MPSERS prescription drug benefit by adopting increased co-pays and a formulary. The State has not sought to cancel this benefit. Indeed, it has sought limited payments by retirees to off-set dramatically increasing costs in the face of budget crisis. This is action is entirely reasonable.

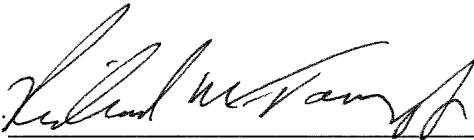
Thus, even if MCLA §38.1391(1) did create an accrued financial benefit or a contractual right, that right has *not* been diminished or impaired. Thus, the State’s actions did not violate the Contract Clause or Art. 9, §24.

**RELIEF REQUESTED**

The League and the Association hereby request that this Honorable Court: 1) affirm the holding of the Court of Appeals that the provision of health care benefits, such as prescription drug benefits, are not "accrued financial benefits" within the scope of Art. 9, §24; 2) reverse the holding of the Court of Appeals that MCLA §38,1391(1) created a contract; and 3) affirm the finding of the Court of Appeals that any benefit or right found in MCLA §38.1391(1) was not impaired by the changes in the provision of retiree health insurance at issue in this case.

Respectfully submitted:

KELLER THOMA, P.C.

By: 

Dennis B. DuBay (P12976)

Richard W. Fanning, Jr. (P55697)

Barbara A. Rohrer (P58807)

Attorneys for *Amici Curiae*

Michigan Municipal League and

Michigan Townships Association

440 East Congress, Fifth Floor

Detroit, Michigan 48226

(313) 965-7610

Dated: December 16, 2004

1334StudierAmici.wpd

KELLER THOMA A PROFESSIONAL CORPORATION

**V**

**MICHIGAN PUBLIC SCHOOL EMPLOYEES  
RETIREMENT BOARD, MICHIGAN PUBLIC  
SCHOOL EMPLOYEES' RETIREMENT  
SYSTEM, DEPARTMENT OF MANAGEMENT  
AND BUDGET, and TREASURER OF MICHIGAN,**

**Defendants-Appellees/Appellants.**

**KELLER THOMA, A Professional Corporation**

**By: Dennis B. DuBay (P12976)**  
**Richard W. Fanning, Jr. (P55697)**  
**Barbara A. Rohrer (P58807)**

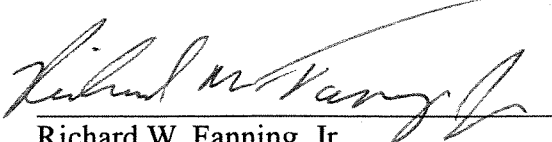
**Attorneys for *Amici Curiae*  
Michigan Municipal League and  
Michigan Townships Association  
440 E. Congress, 5th Floor  
Detroit, MI 48226  
(313.965.7610)**

**AFFIDAVIT**

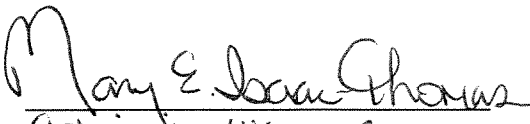
STATE OF MICHIGAN)  
                                  )SS  
COUNTY OF WAYNE )

RICHARD W. FANNING, JR., being first duly sworn, deposes and says that he is an attorney for the Michigan Municipal League and the Michigan Townships Association, that he has

read the foregoing Motion for Leave to Appear as Amici Curiae and the accompanying Brief, and that the contents thereof are true to the best of his knowledge.

  
Richard W. Fanning, Jr.

Subscribed and sworn to before me  
this 16th day of December 2004.

  
acting in Wayne County  
MARY E. ISSAC-THOMAS  
Notary Public, Oakland County, Michigan  
My Commission Expires July 2, 2005

KELLER THOMA A PROFESSIONAL CORPORATION



**STATE OF MICHIGAN  
IN THE SUPREME COURT**

**ALBERTA STUDIER, PATRICIA M.  
SANOCKI, MARY A. NICHOLS, LAVIVA  
M. CABAY, MARY L. WOODRING and  
MILDRED E. WEDELL,**

**Plaintiffs-Appellants/Appellees,**

**v**

**MICHIGAN PUBLIC SCHOOL EMPLOYEES  
RETIREMENT BOARD, MICHIGAN PUBLIC  
SCHOOL EMPLOYEES' RETIREMENT  
SYSTEM, DEPARTMENT OF MANAGEMENT  
AND BUDGET, and TREASURER OF MICHIGAN,**

**Defendants-Appellees/Appellants.**

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**KELLER THOMA, *A Professional Corporation***

**By: Dennis B. DuBay (P12976)  
Richard W. Fanning, Jr. (P55697)  
Barbara A. Rohrer (P58807)**

**Attorneys for *Amici Curiae*  
Michigan Municipal League and  
Michigan Townships Association  
440 E. Congress, 5th Floor  
Detroit, MI 48226  
(313.965.7610)**

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**PROOF OF SERVICE**

Mary Thomas, being first duly sworn, deposes and says that on the 16th day of December 2004, she served a copy of Michigan Municipal League and Michigan Townships Association's Motion for Leave to Appear as Amici Curiae, Notice of Hearing, Amici Curiae Brief of the Michigan Municipal League and the Michigan Townships Association, and this Proof of Service, upon:

Karen Busch Schneider  
James A. White  
J. Matthew Serra  
White, Schneider, Young & Chiodini, P.C.  
2300 Jolly Oak Road  
Okemos, MI 48864-4597

Thomas L. Casey.  
Larry Brya  
Tonatzin M. Alfaro Maiz  
Assistant Attorneys General  
P.O. Box 30754  
Lansing, MI 48909

by placing copies of said document in a sealed envelope plainly addressed to them with first class postage fully prepaid thereon and depositing said envelope in the United States mail at Detroit, Michigan.

Mary E. Thomas  
MARY E. THOMAS

Subscribed and sworn to before me  
this 16th day of December 2004.

Kathryn Smith Sigman

KATHRYN SMITH SIGMAN  
NOTARY PUBLIC OAKLAND CO., MI  
MY COMMISSION EXPIRES May 16, 2006  
ACTING IN WAYNE COUNTY, MI

A

**State of Michigan**  
**CONSTITUTIONAL CONVENTION**  
**1961**

**OFFICIAL RECORD**



**FRED I. CHASE**  
Secretary of the Convention

**AUSTIN C. KNAPP**  
Editor

**LYNN M. NETHAWAY**  
Associate Editor

4866 71

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## SIXTY-FIFTH DAY

Thursday, January 25, 1962, 2:00 o'clock p.m.

## PROCEEDINGS

**PRESIDENT NISBET:** The convention will please come to order.

Our invocation today will be given by Father William J. Koenigsknecht of the St. Therese church of Lansing.

**FATHER KOENIGSKNECHT:** In the name of the Father and of the Son and of the Holy Spirit. Amen.

Direct, we beseech Thee, O Lord, our actions by Thy inspiration, and further them with Thy continual help; that every prayer and work of ours may always begin from Thee, and through Thee be brought to an end.

Assist us with Thy heavenly grace, that we may be able to fulfill our most sacred duty and stewardship. Teach us both what to give and what to withhold; when to reprove and when to forbear; make us considerate and watchful; and deliver us equally from the weakness of indulgence, and the excess of severity; grant that, both by word and example, we may be careful to lead in the ways of wisdom and true piety.

In the name of the Father and of the Son and of the Holy Spirit. Amen.

**PRESIDENT NISBET:** The roll call will be taken by the secretary. Those present, please vote aye.

**SECRETARY CHASE:** Has everyone voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present. Prior to today's session, the secretary received the following requests for leave:

Messrs. J. B. Richards and Habermehl, from today's session; and Mr. McCauley, from today's session as well as Friday and possibly Monday, due to a death in his immediate family.

**PRESIDENT NISBET:** Without objection, the requests are granted.

**SECRETARY CHASE:** Absent with leave: Messrs. Balcer, Douglas, Habermehl, McCauley, J. B. Richards, Shackleton, Shanahan and Thomson.

Absent without leave: Mr. Hodges.

**PRESIDENT NISBET:** Without objection, Mr. Hodges is excused.

**Reports of standing committees.**

**SECRETARY CHASE:** Mr. Brake, for the committee on finance and taxation, introduces Committee Proposal 36, A proposal with reference to the use to be made of the primary school interest fund, covering the subject matter now found in article X, section 1 of the 1908 constitution;

with the recommendation that it pass.

D. Hale Brake, chairman.

*For Committee Proposal 36 and the reasons submitted in support thereof, see below, page 818.*

**PRESIDENT NISBET:** It will be referred to the committee of the whole and place on the general orders calendar.

**SECRETARY CHASE:** Mr. Brake, for the committee on finance and taxation, introduces Committee Proposal 37, A proposal to provide for care and control of state funds, accounting for public moneys, audits, and publication of reports, and covering the general subject matter found in sections 15, 16, 17, 18 and 13 of article X of the 1908 constitution;

with the recommendation that it pass.

D. Hale Brake, chairman.

*For Committee Proposal 37 and the reasons submitted in support thereof, see below, page 766.*

**PRESIDENT NISBET:** Referred to the committee of the whole and placed on the general orders calendar.

**SECRETARY CHASE:** Mr. Brake, for the committee on finance and taxation, introduces Committee Proposal 38, A proposal with reference to the earmarking of the gas and weight taxes for highway purposes covering the subject matter of article X, section 22 of the 1908 constitution;

with the recommendation that it pass.

D. Hale Brake, chairman.

*For Committee Proposal 38 and the reasons submitted in support thereof, see below, pages 775 or 780.*

**PRESIDENT NISBET:** Referred to the committee of the whole and placed on the general orders calendar.

**SECRETARY CHASE:** Mr. Brake, for the committee on finance and taxation, introduces Committee Proposal 39, A proposal with reference to the earmarking of sales tax revenues covering the subject matter of section 23 of article X of the 1908 constitution;

with the recommendation that it pass.

D. Hale Brake, chairman.

*For Committee Proposal 39 and the reasons submitted in support thereof, see below, page 785.*

**PRESIDENT NISBET:** Referred to the committee of the whole and placed on the general orders calendar.

**SECRETARY CHASE:** Mr. Brake, for the committee on finance and taxation, introduces Committee Proposal 40, A proposal with reference to public retirement systems. Amends article X by adding a section with the recommendation that it pass.

D. Hale Brake, chairman.

*For Committee Proposal 40 and the reasons submitted in support thereof, see below, page 770.*

**PRESIDENT NISBET:** Referred to the committee of the whole and placed on the general orders calendar.

**SECRETARY CHASE:** Mr. Hoxie, for the committee on legislative powers, introduces Committee Proposal 41, A proposal to provide for a 2/3 vote of the legislature for nongovernmental appropriations. Retains article V, section 24;

with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

*For Committee Proposal 41 and the reasons submitted in support thereof, see below, page 837.*

**PRESIDENT NISBET:** Referred to the committee of the whole and placed on the general orders calendar.

**SECRETARY CHASE:** Mr. Hoxie, for the committee on legislative powers, introduces Committee Proposal 42, A proposal to include in the constitution all of sections 1, 2, 3, 4 and 8 of article IX entitled "peachments and removals from office";

with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

*For Committee Proposal 42 and the reasons submitted in support thereof, see below, page 837.*

on our part to leave to the discretion of the legislature the power to invest these pension funds. I therefore oppose the amendment.

CHAIRMAN MARTIN: Mr. Stafseth.

MR. STAFSETH: I also was a member of the committee, and I know one of the most complicated things we had was to try and figure out if we could impose any restrictions. I remember one thing in particular—not getting into retirement funds—we got down to where we were talking about how we would handle moneys in perpetual funds for cemeteries, and this got to be complicated. It became very obvious to us that we had to have something flexible, so we left it to the power of the legislature. So I support the committee report and oppose the Wanger amendment.

CHAIRMAN MARTIN: Mr. Madar.

MR. MADAR: Mr. Chairman, being a member of the board of trustees of the pension system of Detroit, I have discussed this with several people that deal with our investments. And there have been some who appeared before the committee. They feel that this is a step in the right direction. I therefore oppose the Wanger amendment.

CHAIRMAN MARTIN: Mr. Romney.

MR. ROMNEY: Mr. Chairman, the question has been raised as to funds that are managed by employee organizations as well as management of firms, and I can state on the basis of personal knowledge that most of those funds now provide the type of flexibility that we are suggesting here for these public retirement funds. Most of them do include some common stocks of a high grade and this is a result of the joint judgment of the unions and the management people involved.

It does seem to me that what Mr. Goebel has just said, and others, is right, and that we should support the committee in providing this flexibility to protect the long range interest of public employees.

CHAIRMAN MARTIN: The question is on the Wanger amendment. Mr. Karn.

MR. KARN: Mr. Chairman, I would like to call attention to the fact that I would think a substantial percentage of the large, major trust companies today recommend in the case of pension funds a flexibility that is granted by this provision, and I would also want to object to the Wanger amendment on that account.

CHAIRMAN MARTIN: Mr. Wanger.

MR. WANGER: Mr. Chairman, in light of the confusion which the language which I proposed has caused, I would like to withdraw this amendment. I am very much opposed to the state getting into the control of any private enterprise, regardless of whether it is a savings and loan organization or anything else. But it was not my intent to put something in which would unduly restrict the investment, and in light of the people who have spoken, I think probably that the flexibility would not be abused.

CHAIRMAN MARTIN: The amendment is withdrawn. Are there any other amendments to the section? If not, it will be passed.

Section d is passed.

The question now is on the body of the proposal. Are there any amendments to the body of the proposal? If not, it will be passed.

Committee Proposal 37 is passed.

The secretary will read item 27 on your calendar.

SECRETARY CHASE: Item 27 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, Committee Proposal 40, A proposal with reference to public retirement systems. Amends article X by adding a section.

*Following is Committee Proposal 40 as read by the secretary, and the reasons submitted in support thereof:*

The committee recommends that the following be included in the constitution:

Sec. a. THE ACCRUED FINANCIAL BENEFITS OF EACH PENSION PLAN AND RETIREMENT SYSTEM OF THE STATE AND ITS POLITICAL SUBDIVISIONS SHALL BE A CONTRACTUAL OBLIGATION THERE-

OF, WHICH SHALL NOT BE DIMINISHED OR IMPAIRED THEREBY.

ALL SUCH BENEFITS ARISING ON ACCOUNT OF SERVICE RENDERED IN EACH FISCAL YEAR SHALL BE FUNDED DURING THAT YEAR AND SUCH FUNDING SHALL NOT BE USABLE FOR FINANCING UNFUNDED ACCRUED LIABILITIES.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 40:

The problem here is extremely difficult. Any public system that is set up should have put into it each year sufficient money to meet all of the liability accrued during that year. If that is done from the very beginning, the system is not an excessive burden; but when you go for years without putting in enough money to cover the liability accruing each year, then to try to catch up for the past deficiency becomes a problem of magnitude. On the state level the 2 retirement systems for public school employees are pitiful examples of what results when the state simply puts in for a long period just enough money to meet the payments for retirees due each year.

It is estimated that it would take \$424,688,598.00 to make the outstate employees' system actuarially sound and \$151,679,334.00 to make the Detroit system actuarially sound. This kind of money is not easily found. We were asked to retain in the constitution, section 23 of article X, the constitutional guarantee of not less than 5 per cent, nor more than 7½ per cent of the payrolls from the schools' share of the sales tax. This was not done. The 7½ per cent does not even meet the liability accruing during each year, to say nothing about catching up for the past. To meet the accrued and accruing liability each year would take about 12¼ per cent of the payroll for the outstate system and 15½ per cent for the Detroit system, so instead of putting in any fixed percentage, we have provided for these 2 systems, and all others—state or municipal—a requirement that in each fiscal year the accruing liability shall be funded during that year, thus keeping any of these systems from getting farther behind than they are now.

This is not all that ought to be done but we think it is the maximum requirement that should be written into the constitution. Fortunately many of the systems, and particularly those starting in recent years, have kept sound from the very beginning.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, we didn't want to disappoint anybody by going through a session without a battle. Let me assure you that there are more coming up.

At the time of the 1908 constitution, retirement funds for public employees were not a problem. There was therefore no section in the finance article dealing with them. Now they are a problem, in tremendous number, and with tremendous amounts of money involved; and situations have arisen in some of them that seem to make it desirable that there be some protections and some restrictions in the constitution. We have therefore proposed a new section, and for a detailed explanation of it I again yield to Mr. Van Dusen.

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman and members of the committee, this proposal by the committee is designed to do things: first, to give to the employees participating in these plans a security which they do not now enjoy, by making the accrued financial benefits of the plans contractual rights. This you might think, would go without saying, but several judicial determinations have been made to the effect that participants in pension plans for public employees have no vested interest in the benefits which they believe they have earned; that the municipalities and the state authorities which provide these plans provide them as a gratuity, and therefore it is within the province of the municipality or the other public employer to

Explanation—Matter within [ ] is stricken, matter in capitals is new

That would mean that the legislature would be free, as I said earlier, to take all of the retirement money required by this proposal from the school aid fund, or it could take a part. And since the legislature has in each of the last 4 years been appropriating to school districts and to retirement systems substantially greater sums than those which are currently constitutionally earmarked for that purpose, I don't believe that this provision would have any effect on a lower limit with respect to funds going into retirement systems. In effect, it would increase them.

**CHAIRMAN MARTIN:** Mr. Bentley.

**MR. BENTLEY:** Mr. Chairman, I thank the gentleman for his presentation. I have one more question. It will be very brief. That is this: I assume, Mr. Van Dusen, that the 12½ per cent and the 15½ per cent figures contained in this committee report are based on present salary scales both outstate and in the Detroit area. If those salary scales in either system were substantially increased, I presume that those figures which you have given here would have to be revised upward?

**MR. VANDUSEN:** I think probably not, Mr. Bentley, because they are percentages of payroll.

**MR. BENTLEY:** I thank the gentleman. Mr. Chairman, as I said earlier, there were members of the committee on education that did have some reservations on this question. I hope that if any of them feel compelled to speak, they will take this opportunity to do so.

**CHAIRMAN MARTIN:** May the Chair say he has noted the various people who want to speak and listed their names, and he will call on them in due course. So you can be seated if you want to.

**Mr. Brake.**

**MR. BRAKE:** I was going to emphasize, with Mr. Bentley, the fact that as to the Detroit system, our second paragraph requires approximately twice what is being put into their fund by the state at the present time; and as to the outstate system, substantially more. I thought the other delegates might be interested in the specific figures that shocked Mr. Bentley and his committee and shocked us. You can get different figures from different people when you get to these retirement systems. It is a complicated accounting system. But the figures coming from Jerry Gable, of Detroit, who is the actuary employed by both systems, are these: to make the outstate public school employees' fund actuarially sound would require \$366,517,242; to make the Detroit system actuarially sound would require \$148,975,941.

Always, when you mention figures like that, some teacher begins to get uneasy and thinks she or he is not going to be paid. It doesn't mean that at all. These systems have been paying, and they will continue to pay, and there are too many voters involved for the legislature to ever forget how many voters are involved as far as meeting the payments. This is not talking about meeting the payments. It is talking about better preparing the fund so it will be nearer sound, and our requirement is that they at least go no further behind than they now are.

**CHAIRMAN MARTIN:** Mr. Stafseth.

**MR. STAFSETH:** I think there's one thing that the members of the committee of the whole—and the convention—should consider in this problem: that probably this is the greatest area in our government today in the state of Michigan and at the federal level of where we are having what we call "back door" spending. As Mr. Bentley pointed out, the accrued benefits that have not been funded or paid is around \$600 million. Our state indebtedness is around \$100 million. All we are saying, in effect, in this proposal is: one, that the retirement that was promised any employee which he has lived long enough to earn shall not be impaired or diminished; and two, that from now on all retirement funds that are promised by employers shall be funded properly. In other words, they should put enough money in there so when they retire the money is there. And there was a very specific purpose for this. I was one of the ones that pushed it. I wanted employers, legislative bodies and city councils to be very aware of what they were spending when they gave a person, a public employee, a retirement program. In other words, how much did it cost per year?

Now, what we have done in this paragraph is to say, also, that this indebtedness of around \$600 million or maybe more doesn't have to be paid up tomorrow; all we say is it has to be paid, and that's up to the various governing bodies to figure out. But from now on any governmental body cannot avoid paying for a retirement fund that they promise an employee. They've got to make those payments annually, on time.

**CHAIRMAN MARTIN:** Mr. Rush.

**MR. RUSH:** Mr. Chairman, as a member of both the education and the finance and taxation committees, I was deeply concerned about the wording of this section. Mr. Brake and Mr. Stafseth have both said some of the things that I intended to say. But I believe the wording of this section guarantees to our teachers and other recipients of these funds much more than the wording in the old constitution. If this is followed by the legislature, it will guarantee almost twice what the old constitution provided, a ceiling of 7½ per cent.

We have had the wording of this section checked by Mr. Christie and other managers of funds and they have felt that it is adequate and provides what is necessary. I just wanted to add that. I support the report of the committee on finance and taxation.

**CHAIRMAN MARTIN:** Mr. Erickson.

**MR. ERICKSON:** Mr. Chairman, I believe this is a very healthy provision in the constitution. In the past we have noticed many pension plans that have gotten out of hand; the employees have been able to get too high a pension; and in a few years they've found that the pension plans might run 25 to 30 per cent of the payroll.

I have just one question to ask the committee. That is in regard to the statute for circuit judges. I believe that statute provides that no payments can be made from the general fund for the circuit judges' retirement system. I was just wondering what the effect of that would be on this section.

**CHAIRMAN MARTIN:** Mr. Brake.

**MR. BRAKE:** I'm sure this section would in no way change that. The circuit judges' retirement system, as far as the state is concerned, is financed by making everyone who starts a lawsuit pay into that fund as part of the entry fee of the case which he pays to the county clerk. This would make no change in it.

**CHAIRMAN MARTIN:** Mr. Spitler.

**MR. SPITLER:** I would like to ask Mr. Van Dusen a question. First of all, I would like to say that I think the committee has offered here a sound statement regarding our retirement systems, and I want to say that I will support it. But I do have one question that I would like to ask Mr. Van Dusen. Under the present teachers' retirement, as he has stated, requires that 7½ per cent of the money collected under the cent sales tax shall be paid over to the retirement fund. That would be done in 6 payments at the time they make the payments to the school districts. The question I have—and it's not just a fear, because during the last few sessions of the legislature an attempt has been made to remove this payment and pass it back to the local school districts.

We have nearly 2,000 school districts. And if the legislature refused to make this appropriation and passed all the 2 cent sales tax back to the local school districts with the intention that they should make these payments, then we would have a retirement fund board dealing with 2,000 school districts. Instead of taking the payment out of the funds as it comes in the state, and made over to them in 6 payments. It would be much more costly. It would be difficult as far as accounting is concerned, because of the many different kinds of boards of education that we have and the school districts that we have.

Let me say again that I will support this, and I think it is putting our retirement system on a sound basis. But I have that question, because it has been introduced in the legislature in the last 2 or 3 sessions.

**MR. VANDUSEN:** Mr. Chairman and Mr. Spitler, your question, of course, Mr. Spitler, is a sound one. It is not contemplated that this would have that effect. I recognize that to the extent that a school district is the employing and contracting unit, it would share with the state the obligation making the pension benefits available when due, and would

CHAIRMAN MARTIN: Mr. Spitler.

MR. VAN DUSEN: I see no reason, Mr. Spittler, why that couldn't be added. We couldn't, of course, anticipate every question on the floor and cover it. It is now, to the extent that this verbatim record is a part of the proceedings of the convention, expressed as the intention of the committee.

CHAIRMAN MARTIN: Mr. Iverson.  
MR. IVERSON: Mr. Chairman, I would like to ask Mr. 'an Dusen a question, and I don't believe it has been answered. In the case of a municipality which presently has a pension plan, if the people of that municipality finally decided they no longer wanted it, would this language in the first paragraph be sufficient to permit them to dispense with the future operation of a pension plan?  
CHAIRMAN MARTIN: Mr. Iverson, there's no question but

MR. IVERSON: So that the present language was intended then to protect the accrual of benefits to the time that any municipality might dispense with a pension plan?

CHAIRMAN MARTIN: Mr. Austin.

Now, with regard to the 7½ per cent earmarking which is covered under section 23 and which we will take up in Committee Proposal 39, we can at that time decide whether we want to earmark any portion of our funds for this purpose. I think we should agree, first of all, that we want them properly funded, and that is the purpose of Committee Proposal 40. Then, when we get to the other proposal, we can decide whether we want to earmark any money.

**CHAIRMAN MARTIN:** MR. BINKOWSKI.  
**MR. BINKOWSKI:** Mr. Chairman and ladies and gentlemen of the committee, as a member of the committee on finance and taxation, I would like to speak in favor of our committee proposal. I think that most of the reasons for the proposal have been brought out, but I would like to touch upon them very briefly. One of the reasons that has been expressed for making the accrued benefits contractual is the fact that the supreme court decisions have ruled that the pension or retirement systems are a gratuity. And this has been held true today in spite of the fact that we have our concept of deferred compensation. And, many of you who are living in the metropolitan areas, if you will pick up the newspapers over the weekend and read the ads by the Detroit civil service or the Wayne county civil service, or any of the other municipalities, you will find that in their ads they play up the aspect of liberal pensions. And there is no question that when an employee today takes employment with a governmental unit, he does so with the idea that there is a pension plan or retirement system involved. And, in order to protect them, we believe that the first paragraph is necessary.

and also to prevent "back door" borrowing. Of course, we in the city of Detroit have recently seen an example of this stopped by a ruling of a circuit court judge in demanding that the moneys set aside for the Detroit firemen and policemen's pensions be placed in a fund and not be used for current operating expenditures. Therefore, I favor this proposal.

CHAIRMAN MARTIN: Mr. Shanahan.  
MR. SHANAHAN: Mr. Chairman and fellow delegates, as the discussion has developed, I think I see what the words mean. When I first read it I was completely lost in the bog of antecedents. Now, my only reason for arising at this time to discuss this is to present a plea that the section be written in such a way that I would not have difficulty in trying to explain what it means to somebody who would ask me. One of the criticisms I've heard of the 1908 constitution was that some people couldn't make head nor tail out of it without a lawyer's degree. And as I read this, I feel the same way about this— that this is not an improvement. I found it very heavy reading that this is not an improvement. I found it very heavy reading just trying to follow the thought from beginning to end. I am not here to propose an amendment, because I wouldn't know exactly how to start. I am just wondering if there is some way in which this could be rephrased so as to say the same thing, but be readily comprehensible to the average high school graduate.

CHAIRMAN MARTIN: Mr. Downs.

MR. DOWNS: Mr. Chairman, I would like to ask a question, either of Mr. Stafseth or the chairman of the committee, and I believe that his remarks did help clarify this. I speak primarily from ignorance. When the term "the accrued financial benefits" is used, as I understand from Mr. Stafseth, the purpose is to see that instead of using a pay as you go system, there would be a funded system from now on, with some plan to pick up what had not been properly funded. Now, I assume from that that if a governmental unit sets aside so much money for the funding of a pension plan, that that money could not then be used for any other purpose; and if there were an attempt to, the individual employee could use some kind of court action—injunction or mandamus—to prevent that. And, if I'm wrong, I wish the committee chairman or somebody would apprise me.

CHAIRMAN MARTIN: Mr. Brake.

On the second part of your question, there is no way to compel the legislature to appropriate money. There is no way that I know of to compel a city council to raise more money. We have to put some faith in somebody, and this is being put in the legislature.

Now, I would like to say just a word, Mr. Chairman, to what Mr. Shanahan has just said. We could of course enlarge this, and very greatly enlarge it, by putting it into nontechnical language so that a layman could better understand it. The committee has been economical in the use of words. We think that we should be, in the constitution. These words that we have used and that Mr. Shanahan had some trouble in interpreting are the words understood by accountants and actuaries, who will be dealing with this problem; and always, as every lawyer knows, there's more certainty when you use technical, well defined words known to the profession involved, even though they are not quite so familiar to the general public.

IRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, if I may elaborate briefly on Mr. Brake's answer to Mr. Downs' question, I would like to indicate that the words "accrued financial benefits" were used designedly, so that the contractual right of the employee would be limited to the deferred compensation embodied in any pension plan, and that we hope to avoid thereby a pro-



CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman and Mr. Gover, it is designed to prevent cities from in the future using the funds which are put into a pension fund to take care of current service benefits for any other purpose. If a city has become addicted to this practice, I would think the discontinuance of the habit might be a difficult experience for the city, at least briefly. It shouldn't hurt, however, too much. (laughter)

MR. GOVER: Just what do you mean by not hurting too much?

MR. VAN DUSEN: I think I can give a clearer answer to Mr. Gover's question than I did. This is designed to see that money that is put into a pension fund to service currently accruing benefits is used for no other purpose. Any city that has been putting it in with one hand and taking it out with the other has got to stop. And if that hurts, why, it hurts.

CHAIRMAN MARTIN: The question is on the committee proposal. Are there any amendments to the body of the proposal?

SECRETARY CHASE: Mr. Brake offers the following committee amendment—

CHAIRMAN MARTIN: Mr. Hanna.

MR. W. F. HANNA: Mr. Van Dusen, this would not prevent the pension fund, however—the moneys actually in the pension fund—from investing in the city's own special assessment, revenue or general obligation bonds; am I correct?

MR. VAN DUSEN: Mr. Chairman and Mr. Hanna, I think you are quite correct, yes. And Mr. Shackleton had previously made that observation to me across the aisle. It just means that they couldn't take it out and use it for current expenses.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: In taking a final look at this, we came to the conclusion that the word "such" in line 9 might be confusing. It is not necessary. We mean "all benefits," and need no qualifying word between. My amendment simply takes that word out.

SECRETARY CHASE: Mr. Brake, on behalf of the committee on finance and taxation, offers the following amendment:

1. Amend page 1, line 9, after "All" by striking out "such"; so the language will read, "All benefits arising on account of service. . . ."

CHAIRMAN MARTIN: The question is on the committee amendment. All those in favor will say aye. Those opposed will say no.

The amendment is adopted. Are there any further amendments to the committee proposal?

SECRETARY CHASE: There are none, Mr. Chairman.

CHAIRMAN MARTIN: If not, it will pass.

Committee Proposal 40, as amended, is passed.

SECRETARY CHASE: Item 25 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, Committee Proposal 38, A proposal with reference to the earmarking of the gas and weight taxes for highway purposes covering the subject matter of article X, section 22 of the 1908 constitution.

*Following is Committee Proposal 38 as read by the secretary, and the reasons submitted in support thereof:*

The committee recommends that the following be included in the constitution:

Sec. a. All taxes imposed directly or indirectly upon gasoline and like fuels sold or used to propel motor vehicles upon the highways of this state, and on all motor vehicles registered in this state, shall, after the payment of the necessary expenses of collection thereof, be used exclusively for highway purposes, AS DEFINED BY LAW, including the payment of public debts incurred therefor, and shall not be diverted nor appropriated to any other purpose: Provided, The legislature may provide by law a method of licensing, registering, and transferring motor vehicles and their certificates of title, and licensing and regulating motor vehicle dealers and operators; and may

*Explanation—Matter within [ ] is stricken, matter in capitals is new.*

prescribe charges sufficient to pay for the enforcement thereof. The provisions of this section shall not apply to the general sales tax, the use tax, the fees and taxes collected under the auto theft and operators' and chauffeurs' license laws which are used for regulatory purposes; the application fees and mileage fees appropriated to the Michigan public utilities commission by [act 254 of 1933] LAW; the franchise or privilege fees payable generally by corporations organized for profit; nor to ad valorem taxes payable generally by manufacturers, refiners, importers, storage companies, and wholesale distributors on gasoline and like fuels held in stock or bond, and by manufacturers and dealers on motor vehicles in stock or bond.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 38:

The committee has made but 2 changes in the language of the present section 22. Following the words "highway purposes" the committee has added the words "as defined by law," thus giving to the legislature the power to define and limit the meaning of the term "highway purposes". It has also stricken the words "act 254 of 1933" and substituted the word "law".

The committee recognizes that the retention in the constitution of this or any other earmarking is controversial but because of the fact that this is a use tax it is much less controversial than is, for instance, the earmarking of sales tax. It is the feeling of the committee that there is no possibility of taking the earmarking of the gasoline and weight taxes out of the constitution by this convention and most of the members of the committee are in agreement with the idea that this earmarking should be retained.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman and ladies and gentlemen of the committee, we come now to a slightly controversial item, the matter of constitutional earmarking of state collected money. I think that before we get into this specific earmarking for highway purposes, perhaps a little background in this whole matter of earmarking of state funds will be very much in order.

We found in another meeting of some of the delegates in this convention awhile ago that with some of us our philosophies and our votes do not lead in exactly the same direction. I am led to make some remarks particularly because of things that have been said for years, but more particularly in connection with the campaign for calling this convention. Some of the organizations working for the calling of the convention said and more generally inferred that the state financial difficulty was largely due to the earmarking of funds. Newspaper editors are constantly making that inference.

The inference is not correct. I don't want anyone to jump out of his chair before I get through with this next statement, because I'm not going to be as political as you may think when I start. There has to be a cause for such a financial period as we got into in 1959, and it's a very proper thing to try to decide what that cause was, and to remedy it. But the cause for that trouble did not occur just in 1959. It was a buildup through a period of years. And the cause was just this: the inability of the governor and the legislature to agree upon a fiscal program. Now, some of us will blame one; some will blame the other. Whom you blame is your business. Whom I blame I think is my business. And I'm not arguing that here now at all. But it was the inability of those 2 bodies, both having authority, to agree and to work together that caused that financial crisis in 1959, and it was not the earmarking of funds.

I don't want to stop there with that generality. I want to analyze this picture just a little bit. I think we will be better prepared to act correctly on these 3 items that are just ahead of us if we have a little of the background involved. Let's take first these funds, the road funds. There never was a time, from the time that this earmarking was put on, until 1959, when there was any danger whatsoever of using any of those funds for anything except road purposes. An attempt was made 2 or 3 times to broaden the interpretation of what high-

MR. KING: Specifically, yes.

PRESIDENT NISBET: The question Mr. King asks is for us to go back to the consideration of the report of the committee of the whole on Committee Proposal 26 for the purpose of having a record vote. Is there objection?

Hearing no objection, those in favor of agreeing to the committee of the whole's recommendation on Committee Proposal 26 please vote aye — Father Dade.

MR. DADE: Mr. President, could I very graciously tell my colleagues that this has to do with civil rights.

PRESIDENT NISBET: Those in favor of concurring in the recommendation of the committee of the whole on Committee Proposal 26 will vote aye. Those opposed, vote nay.

SECRETARY CHASE: Please, all vote before we lock the machine. Has everyone voted? The machine is now locked, and the vote will be recorded.

*The roll was called and the delegates voted as follows:*

Yeas—128

Allen	Gadola	Norris
Andrus, Miss	Garvin	Page
Anspach	Goebel	Plank
Austin	Gover	Powell
Baginski	Greene	Pollock
Balcer	Gust	Prettle
Barthwell	Habermehl	Pugsley
Batchelor	Hanna, W. F.	Radka
Beaman	Haskill	Rajkovich
Bentley	Hatch	Richards, J. B.
Binkowski	Hatcher, Mrs.	Richards, L. W.
Blandford	Hodges	Romney
Bledsoe	Hood	Rood
Bonisteel	Howes	Rush
Boothby	Hoxie	Seyferth
Brake	Hubbs	Shackleton
Buback	Hutchinson	Shaffer
Conklin, Mrs.	Iverson	Shanahan
Cudlip	Judd, Mrs.	Sharpe
Cushman, Mrs.	Karn	Sleder
Dade	Kelsey	Snyder
Danhof	King	Spitler
Davis	Knirk, B.	Stafseth
Dehnke	Koeze, Mrs.	Staiger
Dell	Krollkowski	Stamm
DeVries	Kuhn	Sterrett
Donnelly, Miss	Leibbrand	Stevens
Doty, Dean	Leppien	Stopczynski
Doty, Donald	Lesinski	Suzore
Douglas	Lundgren	Tubbs
Downs	Madar	Turner
Durst	Mahinske	Tweedie
Elliott, A. G.	Marshall	Upton
Elliott, Mrs. Daisy	Martin	Van Dusen
Erickson	McAllister	Walker
Everett	McCauley	Wanger
Farnsworth	McGowan, Miss	White
Faxon	McLogan	Wilkowski
Flay	Millard	Wood
Finch	Murphy	Woolfenden
Follo	Nisbet	Young
Ford	Nord	Youngblood

Nays—0

On the question of concurring in the recommendation of the committee of the whole with regard to Committee Proposal 26, the yeas are 128 and the nays are none.

PRESIDENT NISBET: It is concurred in and Committee Proposal 26 is referred to the committee on style and drafting. (applause)

*For Committee Proposal 26 as referred to the committee on style and drafting, see above, page 739.*

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration Committee Proposal 40, A proposal with reference to public retirement systems. It reports this proposal back to the convention with one minor amendment:

1. Amend page 1, line 9, after "All" by striking out "such".

It is the recommendation that the amendment be agreed to and the proposal as thus amended do pass.

PRESIDENT NISBET: The question is on agreeing to the amendment. Those in favor say aye. Opposed, no.

The amendment is agreed to.

Committee Proposal 40, as amended, is referred to the committee on style and drafting.

*Following is Committee Proposal 40 as amended and referred to the committee on style and drafting:*

The committee recommends that the following be included in the constitution:

Sec. a. The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof, which shall not be diminished or impaired thereby.

All benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be usable for financing unfunded accrued liabilities.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration: Exclusion Report 2009, A report recommending that article V, section 10 of the present constitution be excluded from the new constitution; Exclusion Report 2010, A report recommending the exclusion of article V, section 11; Exclusion Report 2011, A report recommending the exclusion of article V, section 32; Exclusion Report 2012, A report recommending the exclusion of article V, section 35; Exclusion Report 2013, A report recommending the exclusion of article VII, section 3; Exclusion Report 2014, A report recommending the exclusion of article VII, section 18; and Exclusion Report 2015, A report recommending the exclusion of article VII, section 22. The committee reports these exclusion reports back to the convention with the recommendation that they be adopted.

PRESIDENT NISBET: The question is on the approval of the exclusion reports. Those in favor say aye. Opposed, no.

Exclusion Reports 2009, 2010, 2011, 2012, 2013, 2014 and 2015 are adopted and are referred to the committee on style and drafting.

*For Exclusion Report 2009 as referred to the committee on style and drafting, see above, page 761.*

*For Exclusion Report 2010 as referred to the committee on style and drafting, see above, page 761.*

*For Exclusion Report 2011 as referred to the committee on style and drafting, see above, page 762.*

*For Exclusion Report 2012 as referred to the committee on style and drafting, see above, page 762.*

*For Exclusion Report 2013 as referred to the committee on style and drafting, see above, page 763.*

*For Exclusion Report 2014 as referred to the committee on style and drafting, see above, page 763.*

*For Exclusion Report 2015 as referred to the committee on style and drafting, see above, page 764.*

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration Committee Proposal 38 and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Mr. Leppien.

MR. LEPIEN: I wish to rise to a point of order, Mr. President. A moment ago this convention witnessed one of the delegates rising and asking for a unanimous vote on a certain proposal. No explanation was given, except that they would be referred, and on second reading they would again be brought back and at that time a recorded vote could be had. The another delegate raises the same question, there is a conference had, the ruling is then reversed, and the delegate who arose the second time—not a member of the committee who considered this proposal and helped bring it through this convention—then is recorded as having made the request.

It seems to me, in fairness to the entire picture, that it

A proposal to provide for liquor control, excise taxes and local option by counties;  
with the recommendation that the style and form be approved.  
William B. Cudlip, chairman.

*For Committee Proposal 27 as reported by the committee on style and drafting, see under date of April 30.*

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 24 of that committee, reporting back to the convention Committee Proposal 28, A proposal to provide for compensation of the legislature; with the recommendation that the style and form be approved.  
William B. Cudlip, chairman.

*For Committee Proposal 28 as reported by the committee on style and drafting, see under date of April 27.*

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 25 of that committee, reporting back to the convention Committee Proposal 40, A proposal with reference to public retirement systems; with the recommendation that the style and form be approved.  
William B. Cudlip, chairman.

*For Committee Proposal 40 as reported by the committee on style and drafting, see under date of April 19.*

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 26 of that committee, reporting back to the convention Committee Proposal 41, A proposal to provide for a 2/3 vote of the legislature for non-governmental appropriations; with the recommendation that the style and form be approved.  
William B. Cudlip, chairman.

*For Committee Proposal 41 as reported by the committee on style and drafting, see under date of April 30.*

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 27 of that committee, reporting back to the convention Committee Proposal 42, A proposal to include in the constitution all of sections 1, 2, 3, 4 and 8 of article IX entitled "impeachments and removals from office;" with the recommendation that the style and form be approved.  
William B. Cudlip, chairman.

*For Committee Proposal 42 as reported by the committee on style and drafting, see under date of April 30.*

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 28 of that committee, reporting back to the convention Committee Proposal 43, A proposal pertaining to aliens and property rights; with the recommendation that the style and form be approved.  
William B. Cudlip, chairman.

*For Committee Proposal 43 as reported by the committee on style and drafting, see under date of April 30.*

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 29 of that com-

mittee, reporting back to the convention Committee Proposal 50, A proposal to require the legislature to provide sufficient taxes to meet the state's expenses covering the substance of section 2, article X of the 1908 constitution; with the recommendation that the style and form be approved.  
William B. Cudlip, chairman.

*For Committee Proposal 50 as reported by the committee on style and drafting, see under date of April 19.*

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 30 of that committee, reporting back to the convention Committee Proposal 57, A proposal to require a public hearing on all budgets of local units of government before the budgets are approved; with the recommendation that the style and form be approved.  
William B. Cudlip, chairman.

*For Committee Proposal 57 as reported by the committee on style and drafting, see under date of April 19.*

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention Resolution 57, A resolution promoting fellowship and understanding among the constitutional convention delegates; with a substitute therefor, recommending that the substitute be agreed to and that the resolution, as thus substituted, be adopted.

[Following is the substitute for Resolution 57:

A resolution for continuing and increasing fellowship and understanding among the constitutional convention delegates.

Whereas, The constitutional convention has been immeasurably enriched in its morale and effectiveness by the close association and fellowship of the delegates throughout the work of the substantive committees of the convention; and

Whereas, Said committees, with one exception, have now substantially completed their work; and

Whereas, In the unanimous opinion of the delegates it is good that such association and fellowship be continued: now therefore be it

Resolved, That the president of the convention create or direct an appropriate committee to devise ways and means by which the convention delegates may, from time to time and without public expense, be drawn together in congeniality and friendship; and be it further

Resolved, That the purpose of such get togethers be for the sole purpose of enriching and deepening common understanding, mutual respect and fellowship, toward the creation of a noteworthy document.]

R. C. Van Dusen, chairman.

*For Resolution 57 as offered, see above, page 365.*

PRESIDENT NISBET: The question is on the adoption of the substitute. Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, this resolution was introduced some time ago by Father Dade. The committee rules and resolutions appointed a subcommittee to consider and redraft it. We felt that through implementing it by some appropriate committee, to be either appointed by the president or to be referred to by the president, the resolution had more and we urge the adoption of the substitute and the adoption of the resolution as so substituted.

PRESIDENT NISBET: The question is on the adoption of the substitute resolution as submitted. Those in favor say aye. Opposed, no.

The substitute is adopted.

ldlip	Jones	Snyder
shman, Mrs.	Judd, Mrs.	Spitler
nhof	Karn	Stafseth
hnke	Kelsey	Staiger
ll	King	Stamm
eVries	Kirk, S.	Sterrett
oty, Dean	Knirk, B.	Stevens
oty, Donald	Koeze, Mrs.	Stopczynski
ouglas	Krolkowski	Thomson
owns	Kuhn	Turner
urst	Leibrand	Tweedie
lliott, A. G.	Leppien	Upton
lliott, Mrs. Daisy	Liberato	Van Dusen
rickson	Madar	Wanger
verett	Mahinske	White
arnsworth	McAllister	Wilkowski
igy	McGowan, Miss	Wood
inch	McLogan	Woolfenden
ollo	Millard	Yeager
adola	Mosier	Youngblood
arvin		

Nays — 1

Young

SECRETARY CHASE: On the passage of Committee Proposal 37, the yeas are 115; the nays 1.

PRESIDENT NISBET: Committee Proposal 37 is passed and referred to the committee on style and drafting.

For Committee Proposal 37 as rereferred to the committee on style and drafting, see above, page 2658.

The secretary will read the next proposal.

SECRETARY CHASE: Item 7 on the calendar, Committee Proposal 40, A proposal with reference to public retirement systems. Amends article X by adding a section.

Following is Committee Proposal 40 as reported by the committee on style and drafting, and read by the secretary. (For full text as referred to said committee, see above, page 778.):

Sec. a. The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof[,] which shall not be diminished or impaired thereby.

[All] FINANCIAL benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be usable for financing unfunded accrued liabilities.

PRESIDENT NISBET: The Chair will recognize Mr. Brake.

MR. BRAKE: Mr. President, ladies and gentlemen of the convention, this is a new section for the constitution, and one that very greatly strengthens the public employee retirement systems on both the state and local levels. It does 2 things: in the first paragraph, it provides that the relationship between the employing unit and the employee shall be a contractual relationship so that the municipality may not change the relationship at its will. The benefits that have accrued up to a given time are contractual and must be carried out by the municipality or by the state. The second paragraph provides that each year the system shall pay in enough money to fund the liability arising in that year. It does not require that the system catch up with all of its past liability, which would be an impossibility in connection with some of the state systems, but it does require that they shall not go any further behind.

PRESIDENT NISBET: Will the delegates please clear the board. The question is on Committee Proposal 40. Those in favor of Committee Proposal 40 will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 117

Andrus, Miss  
Anspach  
Austin  
Baginski  
Balcer

Goebel  
Gover  
Gust  
Habermehl  
Hanna, W. F.

Murphy  
Nisbet  
Perrns  
Plank  
Powell

Barthwell	Hannah, J. A.	Prettie
Batchelor	Hart, Miss	Pugsley
Beaman	Haskill	Radka
Bentley	Hatch	Rajkovich
Binkowski	Hatcher, Mrs.	Richards, J. B.
Blandford	Heideman	Rood
Bledsoe	Higgs	Sablich
Bonisteel	Hodges	Seyferth
Boothby	Hood	Shackleton
Bradley	Howes	Shaffer
Brake	Hoxie	Shanahan
Brown, G. E.	Hubbs	Sharpe
Buback	Hutchinson	Sleder
Conklin, Mrs.	Iverson	Snyder
Cudlip	Jones	Spitler
Cushman, Mrs.	Judd, Mrs.	Stafseth
Danhof	Karn	Staiger
Dehnke	Kelsey	Stamm
Dell	King	Sterrett
DeVries	Kirk, S.	Stevens
Doty, Dean	Knirk, B.	Stopczynski
Doty, Donald	Koeze, Mrs.	Thomson
Douglas	Krolkowski	Turner
Downs	Kuhn	Tweedie
Durst	Leibrand	Upton
Elliott, A. G.	Leppien	Van Dusen
Elliott, Mrs. Daisy	Lesinski	Wanger
Erickson	Liberato	White
Everett	Madar	Wilkowski
Farnsworth	Mahinske	Wood
Figy	McAllister	Woolfenden
Finch	McGowan, Miss	Yeager
Follo	McLogan	Young
Gadola	Millard	Youngblood

Nays — 1

Allen

SECRETARY CHASE: On the passage of Committee Proposal 40, the yeas are 117; the nays 1.

PRESIDENT NISBET: Committee Proposal 40 is passed and referred to the committee on style and drafting.

For Committee Proposal 40 as rereferred to the committee on style and drafting, see above.

The secretary will read the next proposal.

SECRETARY CHASE: Item 8 on the calendar, Committee Proposal 49, A proposal with reference to the borrowing of money by public corporations and bodies. Amends article VIII by adding a section.

Following is Committee Proposal 49 as reported by the committee on style and drafting and read by the secretary. (For full text as referred to said committee, see above, page 852.):

Sec. a. Public [corporations and public] bodies CORPORATE shall have power to borrow money and to issue their securities evidencing debt[,] subject to [constitutional and statutory limitations] THIS CONSTITUTION AND LAW.

PRESIDENT NISBET: Mr. Brake.

MR. BRAKE: Mr. President, ladies and gentlemen, this section in its present form takes the place of part of section 10, section 20, and section 24 in article VIII of the 1908 constitution.

PRESIDENT NISBET: Will the delegates please clear the board. The question is on Committee Proposal 49. Those in favor of the proposal will vote aye. Those opposed will vote nay. The question is on Committee Proposal 49. Those in favor will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 110

Allen  
Andrus, Miss  
Anspach

Follo  
Gadola  
Goebel

Millard  
Murphy  
Nisbet

Explanation—Matter within [ ] is stricken, matter in capitals is new.